CF0000062361

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR, M.P. Division Bench (Criminal)

CRIMINAL APPEAL NO. 2414 OF 1997

APPEAL UNDER SECTION 374 OF CODE OF CRIMINAL PROCEDURE 1973

15858
Filed on 17.11.97
by S.P. Mahawar
..... Advocate

Rkn. A.R.

APPELLANT (In Jail) :- Shri Prasad alias Hari Prasad
S/o Ganesh Prasad Kunbi,
aged about 45 years;
resident of Puraina , P.S.
Old Bhilai District Durg (MP).
.... (Accused No.2)

VERSUS

RESPONDENT :- The State of Madhya Pradesh
Through : Station Incharge
Police Station Old Bhilai,
District Durg, (MP).

(45)

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:

Hon'ble Shri L.C.Bhadoo, J &
Hon'ble Shri V.K. Shrivastava, J.

18-09-2006

Shri Abhay Kumar Tiwari, counsel for the appellant.

Shri Arun Sao, Addl. Public Prosecutor with Shri U.K.S. Chandel, Panel Lawyer for the State.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 19-9-1997 passed by the 2nd Additional Sessions Judge, Durg, in Sessions Trial No.71/1997 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of Sunita Bai, his wife, under Section 302 of the Indian Penal Code, convicted and sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that in the intervening night of 17th/18th November 1996, the accused/appellant along with one Prabhakar Pandey and deceased Sunita Bai, wife of the accused/ appellant, were in the house of the accused/appellant. In the night, some

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altercation took place between the accused and deceased. The accused/appellant along with one Prabhakar Pandey assaulted the deceased with lathi and danda, as a result of which deceased sustained injuries whereby her ribs were fractured, skull bone was also fractured and she died. Next day morning, this fact was admitted by Hari Prasad and Prabhakar Pandey before Pramila and Mangal Singh, on which Mangal Singh gave a Dehati Nalishi (Ex.-P/1) to the Police Station Bhilai, on which Station House Officer registered the First Information Report under Section 302 read with Section 34 of the Indian Penal Code. The Investigating Officer left for scene of occurrence, after giving notice (Ex-P/6) to the Panchas, prepared the Panchnama (Ex-P/7) of the body of Sunita Bai.

During investigation, accused Prabhakar Pandey gave memorandum under Ex-P/5 and in pursuance of that, the Investigating Officer recovered bamboo lathi under Ex-P/2. Accused Hari Prasad also gave memorandum under Ex-P/4 and in pursuance of that, the Investigating Officer got recovered one bamboo club under Ex-P/3. The site plan (Ex-P/10) of the place of occurrence was prepared by Patwari

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Shivprasad Chaturvedi (PW-3). The body of the deceased was sent for postmortem examination to the District Hospital, Durg, where Dr. P. Balkishore (PW-4) conducted the postmortem on the body of deceased Sunita Bai. He noticed 16 injuries on the body of the deceased. The occipital & temporal bone were found fractured. 3rd to 7th ribs were also found fractured. The Doctor opined that cause of death is shock due to multiple ante-mortem injuries and he prepared the report Ex-P/11. Clothes of the deceased and two bottles of Master Whisky were taken into possession from the place of occurrence under Ex.P/13.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Durg, who in turn committed the case to the Sessions Judge, Durg, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused persons examined nine witnesses. On the other hand, statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which accused Prabhakar Pandey

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pleaded ignorance and stated that he is innocent. Accused Hari Prasad also pleaded innocence. He submitted in reply to question No.3 that it is correct that he informed Mangal Singh that his wife is dead.

Learned Additional Sessions Judge after hearing the Additional Public Prosecutor and counsel for the accused/appellant, convicted and sentenced accused/appellant Hari Prasad as mentioned in para one of this judgment. However, he acquitted co-accused Prabhakar Pandey.

We have heard learned counsel for the parties.

Shri Tiwari, learned counsel for the appellant, has not disputed the homicidal death of Sunita Bai. Apart from that, as per the evidence of Dr. P. Balkishore (PW-4) who conducted the postmortem, he noticed as many as 16 injuries on the person of the deceased, occipital & parietal bone were found fractured. Even 3rd to 7th ribs were fractured and alcohol was present in the small intestine of the deceased. He stated that the cause of death was shock on account of injuries. Therefore, in view of the above evidence, it is established that the death of deceased was homicidal in nature.

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As far as involvement of the accused/appellant in committing the murder of his wife Sunita Bai is concerned, the main witnesses Mangal Singh (PW-1) and Pramila Bai (PW-2) wife of Mangal Singh before whom Prabhakar Pandey and Hari Prasad made extra judicial confession have turned hostile. Therefore, the only circumstance remains that the accused and the deceased were in the house, in the night and the injuries which were found on the body of the deceased has not been explained by the accused. On the contrary, he gave a false explanation to Mangal Singh (PW-1) that he does not know how Sunita Bai has died. Therefore, presence of the accused in the house in the fateful night stands established by the fact that in reply to question No.3 under Section 313 of the Code of Criminal Procedure accused has admitted that he informed Mangal Singh in the morning that his wife died. Even Mangal Singh (PW-1) in para 2 of his evidence has stated that in the morning accused met him, was weeping and said that his wife died. He enquired from the accused as to whether there was any quarrel between them, he replied that there was no quarrel and explained that after taking meal they went for sleep, in the morning, he tried to wake up Sunita, but she did not wake

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up. Therefore, presence of the accused is established in the house in the fateful night.

PW-5 Arjun Narayan has stated in para 5 of his evidence that after reporting the matter by Mangal Singh accused met him and informed that he and Sunita consumed liquor in the night and on the next day morning, when he tried to wake up Sunita, she did not wake up and there was swelling on the face of Hari. On enquiry, Hari informed that after consumption of liquor, he fell down, therefore, he received the injuries. In view of the above evidence, presence of the accused is established.

PW-9 J.P. Puranik, the Investigating Officer, had stated that two bottles of Master Whisky were recovered from the place of occurrence. One bottle containing half of the wine and another bottle was empty. He stated that there was blood on the clothes of the deceased. Two tumblers were also recovered from the place of occurrence and smell of the liquor was present in those tumblers.

PW-4 Dr. P. Balkishore, has stated that on 29-11-1996 he was working as Medical Officer and he conducted the postmortem on the body

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of Sunita Bai. He noticed as many as 16 injuries on the body of the deceased. There were abrasions on almost every part of the body. Occipital & temporal bone and 3rd to 7th ribs were fractured. The thyroid bone was also fractured and there was alcohol in the small intestine. The accused has not explained the above injuries. The accused gave a false explanation to Mangal Singh that he did not know how Sunita Bai died. In view of the above evidence, it is established that the accused and the deceased were in the house. The deceased sustained 16 injuries and as per the evidence of Arjun Narayan (PW-5), the accused also sustained injuries and there was swelling on his face. On enquiry by Arjun (PW-5), accused/appellant - Hari informed that after consumption of liquor he feil down, therefore, he sustained injuries. From the evidence, it is established that the accused was the author of the crime in question.

Mr. Tiwari, learned counsel for the appellant, argued that as per the medical evidence liquor was found in the small intestine of the deceased. One empty bottle and one bottle containing half of liquor recovered from the place of occurrence along with two tumblers, which show that the accused and the deceased consumed liquor, in that process, altercation

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and quarrel took place between them. There is nothing on record, which shows that the accused assaulted the deceased with intention to cause her death. The club has been recovered at the instance of accused, therefore, the offence against the accused does not travel beyond Section 304 Part-II of the Indian Penal Code.

We have gone through the evidence. Argument advanced by learned counsel for the accused/appellant is not without merit. The admitted position is that as per the medical report liquor was found in the small intestine of the deceased and even one empty bottle and one bottle containing half of liquor along with two tumblers in which smell of the liquor was present were recovered. From the circumstances, it appear that after consumption of the liquor some altercation and scuffle took place between the accused and deceased, in that process, the accused assaulted the deceased, while assaulting the deceased with the club, he had the knowledge that the death of Sunita Bai likely to be caused. We are of the considered opinion that the offence against the accused/ appellant under Section 304 Part-II of the Indian Penal Code is made out.

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	For the foregoing reasons, sentence of the accused/appellant under Section 302 of the Indian Penal Code cannot be sustained. In the result, the appeal of the accused/ appellant partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the Indian Penal Code are set aside, instead thereof he is convicted under Section 304 Part-II of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten year. As per the judgment of the trial Court, the accused is in detention since 19-11-1996 till today, the accused shall be entitled for set off for the above detention period against the above sentence. **Sd/-** **L.C. Bhadoo** **Judge** Gowri	**Sd/-** **V.K. Shrivatava** **Judge**

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